

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JHEN SCUTELLA,)	
Plaintiff,)	
)	C.A. No. 19-354 Erie
v.)	
ERIE COUNTY PRISON, et al,)	District Judge Susan Paradise Baxter
Defendants.)	Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

This action was commenced by Plaintiff’s filing of a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1], on December 2, 2019. Plaintiff subsequently filed a motion for preliminary injunction and/or motion for temporary restraining order [ECF No. 3]. In this motion, Plaintiff seeks an order directing Defendants to abide by a “sentencing order” issued by the Erie County Court of Common Pleas and to release him to a work release program (*Id.* at p. 4).

This matter was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On January 10, 2020, Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that Plaintiff’s motion for preliminary injunction and/or temporary restraining order be denied [ECF No. 5]. In particular, Judge Lanzillo found that Plaintiff’s motion challenges the duration of his physical imprisonment, which is relief that is not available in an action pursuant to 42 U.S.C. § 1983.

On January 22, 2020, Plaintiff filed Objections to the R&R [ECF No. 9], in which he

argues that he is not challenging his conviction or duration of his sentence, but is merely seeking to compel Defendants to comply with the sentencing order and release him from prison to a work release program; however, this semantic difference does not change the fact that he is challenging the length of his physical imprisonment. Moreover, the record reflects that Plaintiff has since been released from incarceration [ECF Nos. 38, 39] and, thus, his request for injunctive relief is moot.

Thus, after *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 30th day of March, 2020;

IT IS HEREBY ORDERED that Plaintiff's motion for preliminary injunction and/or temporary restraining order [ECF No. 3] is DENIED. The report and recommendation of Magistrate Judge Lanzillo, issued January 10, 2020 [ECF No. 5], is adopted as the opinion of the court.

s/Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge